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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,898	10/21/2003	David Schugar		3925

43536 7590 10/18/2005

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EXAMINER

MOSSER, ROBERT E

ART UNIT PAPER NUMBER

3713

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/688,898	<b>Applicant(s)</b> SCHUGAR, DAVID	
	<b>Examiner</b> Robert Mosser	<b>Art Unit</b> 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-17, 22, 23 and 25-30 is/are rejected.
- 7) ☒ Claim(s) 4-6, 18-21, 24 and 31-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-26-05</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**



**This action is non-final.**

**Claims 1-34 are pending.**



***Information Disclosure Statement***

*The information disclosure statement submitted January 26<sup>th</sup>, 2005 has been considered and a copy of such is attached.*

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 recites the limitation "the betting squares" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 7-9, 13-17, 22-23, 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber (US 6,896,264).

**Claims 1, 7, 15, 23, 28:** Haber teaches a method and apparatus for a casino game including the display of a linear playing field including a first and second end (Figure 1, "Higher-Lower"), receiving a wager that the game outcome will be located at one of the two ends (Abstract), the determination of a game result based on the outcome of a random number generator utilizing the roll of dice (Elements 310, 350), and accounting for the wager based on the game result (Figure 3).

Haber is silent however regarding the explicit use of a "game piece" or puck for the indication of the current state of the game and in its stead utilizes "marking" (Col 3:47-59) and a display board (Col 4:4-18) for conveying the result of game outcomes to a player. The examiner gives official notice that use of a "game piece" or "puck" is extremely old and well known in the art of gaming for indicating recording game progress and state to the player(s). It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized a game piece or puck in place of the game state indicators of Haber as taught above in order to provide an indicator in

keeping the intended game theme or alternatively offer the player and readily recognizable visual reference proximate to subsequent game result locations.

**Claims 2, 16, 29:** Haber teaches an even payout when a wager is made in the center ("7" Figure 1A) however silent regarding the deduction of a house commission. The examiner gives official notice that the deduction of house commission or house rake is extremely old and well known in the art of gaming for it's use in ensuring a minimum house profit on a gaming table. It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated a house commission in the game of Haber in order to ensure a minimum house take on the outcome of even a winning hand and thereby minimize house losses.

**Claims 3, 9, 17, 30:** Haber teaches appropriating payout amounts based on subsequent game outcomes (Col 3:1-8).

**Claim 8:** Haber teaches the use of table locations for the indication of wager placement (Col 3:47-59).

**Claims 13, 22:** Haber teaches a game progression including a game event wherein players are allowed to place and alter wagers (Figure 3, Col 3:5-8).

**Claim 14:** Haber teaches the inclusion of sequential number system as well as the use of unconventional dice however is silent regarding the inclusion of negative numbers. At the time of invention it would have been an obvious matter of design choice to one of ordinary skill in the art of gaming to alter the sequential numeric range from a purely positive number system to one of a negative and positive because applicant has fail to disclose that the use of negative numbers provides a distinct

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advantage, serves a particular purpose, or solves a stated problem. One of ordinary skill in the art would have expected either the invention of Haber or the claimed invention of applicant to perform equally as the numbering system as so claimed by applicant is not cumulatively reliant so as to incorporate any separate utility to the claimed negative numbers not previously provided for by Haber.

**Claims 25-27**      Haber teaches allowing the player to play multiple bets/wagers and as such would allow a player to wager on all game outcomes thereby ensuring a player win implicitly greater than zero in at least one of a plurality of games.

Claims **10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber (US 6,896,264) in further view of Sink or Swim 9/16/2003 Black Box gaming.

Haber teaches the use of location to indicate respective player's wagers however is silent regarding the utilization of lines to indicate a respective player associated with a particular wager. In a related wagering game Sink or Swim teaches the use of a line system to indicate a respective player associated with a particular wager (Full Text). It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the wager indication system of Sink or Swim in the invention of Haber in order to minimize chip movement across the gaming table during play and further allow the player to readily track current wagers.

***Allowable Subject Matter***

Claims **4-6, 18-21, 24, and 31-34** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hiron (GB 2133992) teaches a board game apparatus.

Cohen (2005/0082757) teaches a method and apparatus for a dice game.

Robbins et al (US 4,334,685) teaches a three dice wagering game.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M.Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

*Chanda L. Harris*  
CHANDA L. HARRIS  
PRIMARY EXAMINER